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No. 85-

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

CHARLES ATKINS, Commissioner
of the Massachusetts
Department of Public Welfare,

Petitioner,

v.

SANTOS RIVERA, Madeline McKenna,
and all others similarly situated,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT FOR THE COMMONWEALTH OF MASSACHUSETTS

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QUESTION PRESENTED

Does a six-month spenddown period for medically needy Medicaid eligibility, which has been permitted by federal regulation since 1966, is employed by most states which extend coverage to the medically needy, allocates resources to the most needy of potentially eligible applicants, and has very recently been upheld by the First and Second Circuits, violate Title XIX of the Social Security Act?

PARTIES

The respondent class is composed of all AFDC-related medically needy applicants for or recipients of Medicaid in Massachusetts subject to a six-month spenddown. All other parties are named in the caption.

TABLE OF CONTENTS

QUESTION PRESENTED	i
PARTIES	i
TABLE OF AUTHORITIES	v
OPINIONS BELOW	2
JURISDICTION	2
STATUTES INVOLVED	3
STATEMENT OF THE CASE	5
Statement of Facts	5
Prior Proceedings	10
REASONS FOR GRANTING THE WRIT	15
I. THE DECISION BELOW DIRECTLY CONFLICTS WITH RECENT DECISIONS OF THE COURTS OF APPEALS FOR THE FIRST AND SECOND CIRCUITS; THE CONFLICT EXTENDS TO CONTRARY HOLDINGS AS TO THE VALIDITY OF A SPECIFIC MASSACHUSETTS STATUTE.	15
II. THE DECISION BELOW RAISES AN IMPORTANT QUESTION CONCERNING THE PROPER INTERPRETATION OF TITLE XIX, WHICH SHOULD BE SETTLED BY THIS COURT.	21

	Page
III. THE DECISION BELOW IS IN CONFLICT WITH THE DECISIONS OF THIS COURT REGARDING THE ROLE OF THE SECRETARY IN INTERPRETING TITLE XIX.	33
CONCLUSION	36
APPENDIX	
Opinion of the Massachusetts Supreme Judicial Court	A1
Opinion of the Hampden Superior Court	A28
Administrative Decisions, Massachusetts Department of Public Welfare	A46
Order of the Massachusetts Supreme Judicial Court	A61
Letter re: Petition for Rehearing	A63
Amended Judgment of the Hampden Superior Court	A64

TABLE OF AUTHORITIES

Cases

Allen v. Petit, No. 85-0025-P (D. Me. June 3, 1985) 20

Brogan v. Miller, 537 F. Supp. 139 (N.D. Ill. 1982) 20

Cashman v. Perales, No. Civ 85-0639-T (W.D.N.Y. Aug. 29, 1985) 20

Coleman v. Miller, No. 82-C-6259 (N.D. Ill., Feb. 23, 1984) 20

Connecticut Department of Income Maintenance v. Heckler, ___ U.S. ___, 105 S. Ct. 2210 (1985) 34

DeJesus v. Perales, 770 F.2d 316 (2d Cir. 1985) passim

Herweg v. Ray, 455 U.S. 265 (1982) 35

Hodges v. District of Columbia, No. 85-1616 (U.S.D.C., D. D.C.) 20

Hogan v. Heckler, 769 F.2d 886 (1st Cir. 1985) passim

Hogan v. Heckler, 597 F. Supp. 1106 (D. Mass. 1984) 13

Schweiker v. Gray Panthers, 453 U.S. 34 (1981) 35

Schweiker v. Hogan, 457 U.S. 569 (1982) 9, 34

Statutes

Deficit Reduction Act of 1984, P.L. 98-369, § 2373(c) 30

Omnibus Budget Reconciliation Act of 1981, P.L. 97-35 29

Tax Equity and Fiscal Responsibility Act of 1982 P.L. 97-248 § 137(b)(8) 26

28 U.S.C. § 1257(3) 3

42 U.S.C. §§ 601 et seq. 7

42 U.S.C. § 602(a)(13) 7

42 U.S.C. §§ 1381 et seq. 7

42 U.S.C. § 1382c(1) 7

42 U.S.C. § 1396 6

42 U.S.C. § 1396a(a)(10)(A) 7

42 U.S.C. § 1396a(a)(10)-(C)(i)(III) passim

42 U.S.C. § 1396a(a)(17) 5, 11, 19, 27

Mass. Gen. Laws ch. 118E, § 10 4, 8, 11, 12, 15, 17

Mass. St. 1969, c. 800, § 1 31

Regulations

42 C.F.R. § 435.831 (1984) 5

Miscellaneous

46 Fed. Reg. 47980 (Sept. 30, 1981) 28

H.R. Rep. No. 97-757, Part I, 97th Cong., 2d Sess. 13 (1982) 29

H.R. Rep. No. 98-861, 98th Cong., 2d Sess., 1366-67 (1984), reprinted in 1984 U.S. Code Cong. & Admin. News 697, 2054-55 29, 30

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PETITION FOR A WRIT OF CERTIORARI
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Charles Atkins, Massachusetts Commissioner of Public Welfare, respectfully petitions for a writ of certiorari to review the opinion and order of the Massachusetts Supreme Judicial Court.

OPINIONS BELOW

The opinion of the Supreme Judicial Court (A1) is reported at 395 Mass. 189 and 479 N.E.2d 639. Rehearing was denied without opinion. A63. The opinion of the Hampden Superior Court (A28) and the administrative decisions of the state Department of Public Welfare (A46, A54) are not reported.

JURISDICTION

The opinion and order of the Supreme Judicial Court, the highest court of the Commonwealth of Massachusetts, were entered on June 12, 1985. On August 21, 1985, Justice Brennan extended the time in which to petition for certiorari, to and including October 15, 1985 (Supreme Court docket no. A-147); this petition is being filed on or before that date. In addition, the Commissioner's petition

for rehearing in the Supreme Judicial Court was denied on September 26, 1985 (A63); this petition for certiorari is being filed within 90 days after that date. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

STATUTES INVOLVED

This case involves the construction of 42 U.S.C. § 1396a(a)(10)(C)(i)(III) (1982), which provides that a State choosing to extend Medicaid coverage to medically needy groups must, in its state plan, describe:

> (III) the single standard to be employed in determining income and resource eligibility for all such groups, and the methodology to be employed in determining such eligibility, which shall be the same methodology which would be employed under the supplemental security income program in the case of

> groups consisting of aged, blind, or disabled individuals in a State in which such program is in effect, and which shall be the same methodology which would be employed under the appropriate State plan (described in subparagraph (A)(i)) to which such group is most closely categorically related in the case of other groups; . . . (emphasis added)

The decision below held that the emphasized language requires a one-month spenddown in determining medically needy Medicaid eligibility, and on that ground held invalid Mass. Gen. Laws ch. 118E, § 10 (fourth unnumbered paragraph) (1984 ed.), which provides:

> In any case where the monthly income of a recipient or beneficiary is in excess of the exemptions allowed, the recipient or beneficiary shall be liable to pay to the provider of medical care or service an amount which shall be equal to the excess income for a period of six consecutive months, which includes the period when such service was provided. (emphasis added)

The spenddown concept derives from 42 U.S.C. § 1396a(a)(17), which provides that the state Medicaid plan must:

> include reasonable standards . . . for determining eligibility . . . ; and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or for any other type of remedial care recognized under State law[.] (emphasis added)

42 C.F.R. § 435.831 (1984) provides:

> The [state Medicaid] agency must determine income eligibility of medically needy individuals in accordance with this section. The agency must use a prospective period of not more than 6 months to compute income. . . .

STATEMENT OF THE CASE

Statement of Facts

This case presents a pure question of statutory construction, which the

Massachusetts Supreme Judicial Court resolved in a manner and with a result directly contrary to recent decisions of the First and Second Circuits.[1/] The important facts concern the structure and operation of the statutes involved.

Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 et seq., was enacted in 1965 to enable states, "as far as practicable under the conditions in such State," to provide medical assistance ("Medicaid") to needy families and to aged, blind or disabled individuals. 42 U.S.C. § 1396. Participating states must provide coverage to all those who receive cash assistance under either of the major federal categorical welfare programs:

1/ Hogan v. Heckler, 769 F.2d 886 (1st Cir. 1985); DeJesus v. Perales, 770 F.2d 316 (2d Cir. 1985).

Aid to Families with Dependent Children (AFDC), 42 U.S.C. §§ 601 et seq., and Supplemental Security Income (SSI), 42 U.S.C. §§ 1381 et seq. See 42 U.S.C. § 1396a(a)(10)(A). These groups are referred to as the "categorically needy."[2/]

Massachusetts has chosen to extend coverage as well to the "medically needy" -- families and individuals who would qualify for AFDC or SSI, but for their income or resources. Those who meet the categorical (but not the financial) requirements for AFDC, including the members of the respondent class in this case, are known as the "AFDC-related medically needy." The respondents do not

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2/ Eligibility for the categorical programs of cash assistance is determined on a monthly basis. See 42 U.S.C. § 602(a)(13) (AFDC); 42 U.S.C. § 1382c(1) (SSI).

qualify automatically for Medicaid, however, because their net countable income exceeds the medically needy income level. The determination of their Medicaid eligibility involves an extra factor, not considered for categorically needy eligibility: they may become eligible if they incur medical bills equal to their excess income. The amount of medical bills that must be incurred prior to attaining eligibility is known as a "spenddown."

Mass. Gen. Laws ch. 118E, § 10 (fourth unnumbered paragraph)[3/] requires the calculation of excess income over a six-month period to arrive at the spenddown amount. Once the applicant incurs medical bills equal to the amount

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3/ See also the state implementing regulations, noted at A9 and quoted in Hogan v. Heckler, supra, 769 F.2d at 889 n. 5.

of the spenddown, Medicaid pays for all other covered services during the six-month period.[4/]

The Secretary of Health and Human Services, and before her the Secretary of Health, Education and Welfare, has permitted a spenddown period of up to six months since the inception of the Medicaid program in 1966. DeJesus v. Perales, 770 F.2d 316, 332-23 and n. 8 (2d Cir. 1985); Hogan v. Heckler, 769 F.2d 886, 893 (1st Cir. 1985). In reliance upon the Secretary's regulations, 25 of the 32 jurisdictions participating in the medically needy program use a spenddown period of greater than one

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4/ This statutory context is described more fully in Hogan v. Heckler, supra, 769 F.2d at 887-89; see also Schweiker v. Hogan, 457 U.S. 569, 571-76 (1982); DeJesus v. Perales, supra, 770 F.2d at 318-19.

month; most, like Massachusetts, use six months.[5/]

Prior Proceedings

The action was brought in May 1983 in the Massachusetts Superior Court against the Massachusetts Commissioner of Public Welfare ("Commissioner"), as a class action challenging the state's use of a six-month spenddown as violative of Title XIX.[6/] The trial court certified

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5/ These figures are derived from interrogatory answers filed by HHS in October 1983 in Hogan v. Heckler and submitted at the summary judgment stage below. See Record Appendix in the Supreme Judicial Court, at 152-168.

6/ The complaint claimed that: "Defendant's policy and practice of using a six-month period for calculating the income of AFDC-related medically needy applicants for and recipients of Medicaid violates 42 U.S.C. § 1396a(a)(10)-(C)(i)(III) . . .." Complaint, ¶ 31.

(footnote continued)

a plaintiff class of AFDC-related medically needy applicants for or recipients of Medicaid subject to a six-month spenddown and found, on cross-motions for summary judgment, that the six-month spenddown violated the "same methodology" requirement of § 1396a(a)(10)(C)(i)(III), because AFDC eligibility is calculated on a monthly basis. The lower state court ruled that Mass. Gen. Laws ch. 118E, § 10, in requiring a six-month spenddown, is "in direct conflict with federal law" and "must be voided pursuant

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(footnote continued)

The complaint also charged that the six-month spenddown violated 42 U.S.C. § 1396a(a)(17). Judge Friendly saw "little force" to this contention in DeJesus v. Perales, 770 F.2d 316, 323 (2d Cir. 1985); it also was rejected in Hogan v. Heckler, 769 F.2d 886, 891 et seq. (1st Cir. 1985). The courts below did not address the argument.

to the Supremacy Clause of the United States Constitution." A42.[7/]

On appeal, the Supreme Judicial Court affirmed.[8/] After considerable attention to another issue,[9/] that court addressed and invalidated the six-month

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7/ The Amended Judgment, entered in the Superior Court on May 24, 1984, declared that provision of § 10 to be void pursuant to the Supremacy Clause and permanently enjoined the use of a spenddown period of longer than one month. A66 (¶ 4), A67 (¶ 6).

8/ The Commissioner preserved this issue as the principal question presented on the appeal, phrased as follows: "Is the six-month Medicaid income spenddown provision of G.L. c. 118E, § 10, invalid under federal law, notwithstanding the interpretation of the Secretary of Health and Human Services that a six month spenddown is consistent with federal law?" Brief for Appellant in the Supreme Judicial Court, at 1.

9/ Whether the failure to deduct payroll withholdings from earned income in calculating Medicaid eligibility violated state law -- the court found that it did not. See A61; A10-A23.

spenddown in two paragraphs. A23-26. Essentially, the state's highest appellate court relied upon the analysis of Hogan v. Heckler, 597 F. Supp. 1106 (D. Mass. 1984), a federal trial court decision which has now been reversed by Hogan v. Heckler, 769 F.2d 886 (1st Cir. 1985). The court reasoned that "the length of the spenddown period is part of the methodology for evaluating income eligibility," A24 (quoting 597 F. Supp. at 1110), and that the use of a six-month spenddown for medically needy eligibility is more restrictive than the one-month budget period used for the categorically needy, and therefore invalid. A25-26. The court "affirm[ed] that portion of the [Superior Court] judgment which determined that the department's use of a six-month budget period for spenddown

purposes violated 42 U.S.C. § 1396a(a)-(10)(C)(i)(III)." A26-27. The rescript so ordering entered on June 12, 1985. A61.

On August 12, 1985, Hogan v. Heckler, 769 F.2d 886 (1st Cir. 1985), and DeJesus v. Perales, 770 F.2d 316 (2d Cir. 1985), were decided -- both in direct conflict with the decision below. In order to bring these intervening authorities to the attention of the Supreme Judicial Court prior to seeking review in this Court, the Commissioner sought an extension of time until October 15, 1985, in which to petition for certiorari, No. A-147, which was allowed on August 21, 1985, and filed a petition for rehearing, which the Supreme Judicial Court denied without opinion on September 26, 1985. A63.

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW DIRECTLY CONFLICTS WITH RECENT DECISIONS OF THE COURTS OF APPEALS FOR THE FIRST AND SECOND CIRCUITS; THE CONFLICT EXTENDS TO CONTRARY HOLDINGS AS TO THE VALIDITY OF A SPECIFIC MASSACHUSETTS STATUTE.

The decision below is in direct conflict with Hogan v. Heckler, 769 F.2d 886 (1st Cir., August 12, 1985) (opinion by Campbell, C.J.) and DeJesus v. Perales, 770 F.2d 316 (2d Cir., August 12, 1985) (opinion by Friendly, J.), both of which expressly rejected its interpretation of Title XIX. 770 F.2d at 327-28; 769 F.2d at 898, 891 n. 11.

In Hogan v. Heckler, the First Circuit held that Mass. Gen. Laws ch. 118E, § 10 (fourth unnumbered paragraph), is consistent with 42 U.S.C. § 1396a(a)(10)-(C)(i)(III) and therefore is valid. In

the decision below, the highest court of the Commonwealth held that the same state statute is not consistent with § 1396a(a)(10)(C)(i)(III) and therefore is void. These holdings rest entirely upon a conflicting interpretation of Title XIX; no state law grounds are involved. The only difference between the two cases is that the plaintiff class in Hogan consists of "SSI-related" medically needy applicants or recipients subject to a six-month spenddown, while the respondent class herein consists of "AFDC-related" such individuals. As the court below expressly recognized, the legal analysis is unaffected by this difference. A24-A25.

In DeJesus v. Perales, the Second Circuit specifically held, also contrary to the decision below, that a six-month

spenddown is consistent with § 1396a(a)(10)(C)(i)(III). DeJesus, like the decision below, involved a class of AFDC-related applicants and recipients. The only difference between DeJesus and this case is geographical.

This conflict over the construction of a federal statute between two federal courts of appeals on the one hand and the highest court of a state on the other is by itself sufficient to warrant review on certiorari. But there is an extra, pressing dimension to this petition because two of these contrary holdings create a conflict within Massachusetts itself.

Hogan v. Heckler declares the six-month spenddown required by Mass. Gen. Laws Ch. 118E, § 10, to be valid; the decision below holds it to be void. The petitioner is placed in a dilemma by

these rulings. It is his duty to enforce the Massachusetts statute unless it is invalid. The federal court of appeals, in a thorough and persuasive opinion, has determined that the statute is valid under federal law; but the state court has declared otherwise. The petitioner has attempted to persuade the court below to reconsider on the basis of the intervening decisions of the federal courts of appeals, but that effort was inexplicably rejected. Unless review is granted by this Court, the petitioner will remain enjoined, on the basis of Title XIX, from enforcing a state law which the First Circuit has determined to be consistent with Title XIX.10/

10/ This anomoly could well be exacerbated in future proceedings. The Hogan

(footnote continued)

There are no distinguishing features between Hogan, DeJesus and this case. The First and Second Circuits, in comprehensive and well-reasoned analyses by Chief Judge Campbell and by Judge Friendly, respectively, held that Title XIX does not require a one-month spend-down; the decision below, in two para-

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(footnote continued)

plaintiffs have already taken the position that 42 U.S.C. § 1396a(a)(17), which provides that eligibility standards must be "comparable for all groups," see 770 F.2d at 891, 894, requires the same spenddown period for SSI-related as for AFDC-related medically needy. See 769 F.2d at 891, n. 11. The First Circuit could well hold that six months is permissible for both groups, while the Supreme Judicial Court seems likely to adhere to the view that as a matter of federal law one month is required for both, with the Commissioner caught in the middle. Review by this Court at this time would forestall such a confrontation.

graphs, took a contrary position.[11/] The conflict could not be more real, direct, or immediate; the need for its resolution by this Court is serious and pressing.

11/ While these are the only appellate courts to have addressed this issue, it is an issue of national significance and has been the subject of at least the following district court actions: Allen v. Petit, No. 85-0025-P (D. Me. June 3, 1985) (invalidating six-month spenddown for both AFDC-related and SSI-related medically needy); Cashman v. Perales, No. Civ 85-0639-T (W.D.N.Y. Aug. 29, 1985) (upholding six-month spenddown for SSI-related medically needy); Coleman v. Miller, No. 82-C-6259 (N.D. Ill., Feb. 23, 1984) (invalidating six-month spenddown for AFDC-related medically needy); Hodges v. District of Columbia, No. 85-1616 (U.S.D.C., D. D.C.) (filed May 17, 1985; cross-motions for summary judgment pending); see also Brogan v. Miller, 537 F. Supp. 139 (N.D. Ill. 1982) (invalidating six-month spenddown for SSI-related medically needy in "§ 209(b) option" state).

II. THE DECISION BELOW RAISES AN IMPORTANT QUESTION CONCERNING THE PROPER INTERPRETATION OF TITLE XIX, WHICH SHOULD BE SETTLED BY THIS COURT.

The ruling below raises a federal question of undeniable importance. The medically needy program is a very significant component of Medicaid,[12/] and the length of the spenddown period fundamentally affects its scope, and therefore its cost and the allocation of resources within Medicaid generally.

Twenty-nine states, Puerto Rico, the Virgin Islands and the District of Columbia participate in the medically needy program. Of these, 25 (24 states and the District of Columbia) use spenddown

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12/ In Massachusetts, 53.3% of Medicaid expenditures in fiscal year 1985 went to the medically needy (without a one-month spenddown).

periods of greater than one month.[13/]

The impact of the imposition of a one-month spenddown upon these jurisdictions would be substantial. The Commissioner estimated in 1983 that the increased payments resulting from a one-month spenddown for the AFDC-related medically needy in Massachusetts (a program which expended $47.8 million in fiscal year 1983) would be $19.6 million in the first year, with the potential for a substantially greater increase thereafter.[14/] In Hogan v. Heckler, the Commissioner projected that additional

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13/ Fifteen states and the District of Columbia use a six-month period; five states use three months; four use a combination of six and either one or three months. See n. 5, supra.

14/ See Record Appendix in the Supreme Judicial Court, at 186 (¶ 12), 184 (¶ 4(e)).

payments resulting from a one-month spenddown for the SSI-related medically needy program in Massachusetts (which expended $570 million in fiscal year 1985) would be in the range of $208 million annually.15/ These projected costs in Massachusetts of the increased coverage resulting from a one-month spenddown total approximately 20% of the state's fiscal year 1985 Medicaid budget of $1.168 billion. Although these are only roughlyestimated projections, they give some idea of the magnitude of the impact of the decision below. This magnitude is corroborated by the figures presented for New York. DeJesus, supra,

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15/ The SSI-related group has considerably greater medical costs since it is composed of elderly and disabled individuals.

770 F.2d at 320 ($78 million annually, for inpatient hospital care only).

States such as Massachusetts use a six-month spenddown as a method of allocating scarce welfare resources. The use of a spenddown period of six months, rather than a shorter period, focuses the State's allocation of resources upon the most medically needy. For example, an applicant whose "excess income" (net countable income in excess of the Medicaid standard) is $100/month and whose medical expenses exceed $600 over a six-month period is more needy than another applicant with the same income but with medical expenses of only $300 over six months -- even if the entire $300 happens to be incurred all in one month. While limiting its medically needy coverage to the former group, Massachusetts uses a

high standard of income eligibility and provides a wide range of covered services to those found eligible.

Whether Congress intended to impose upon Massachusetts and 24 other jurisdictions a one-month spenddown, which would require a fundamental reallocation of resources (e.g., by withdrawing from the medically needy program, by providing a narrower range of covered services, or by lowering the standard of income eligibility) is intrinsically an important federal question warranting review by this Court.

The question is important not only to the States which will have to reassess their participation in the medically needy program or substantially reallocate their resources. It is of "great concern" to the respondent class members, and to those similarly situated in other

states, whose Medicaid eligibility is at issue. DeJesus, supra, 770 F.2d at 318. It is of considerable potential importance as well to those individuals who are or will be eligible for Medicaid under the current allocation of resources, but whose eligibility, or the scope of whose benefits, may be adversely affected by the restructuring of Medicaid programs which the imposition of a one-month spenddown predictably would entail. Finally, it is of great significance to Congress, which clearly had no intention to require such a result.

The "same methodology" language of 42 U.S.C. § 1396a(a)(10)(C)(i)(III) was enacted in the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA"), P.L. 97-248, § 137(b)(8), 96 Stat. 324, 378, as a "Technical Correction[] from Omnibus Budget Reconciliation Act of

1981," see 96 Stat. 376. There is no hint in the legislative history that either the purpose or the effect of this technical correction was to force 24 states and the District of Columbia to substantially expand the scope of their medically needy programs by requiring a one-month spenddown.

This language inserted by TEFRA simply cannot be applied literally to the spenddown calculation. The concept of offsetting medical expenses against income is the creation of 42 U.S.C. § 1396a(a)(17), and is unique to the medically needy program. Neither AFDC nor SSI has any "methodology" for computing a spenddown of medical expenses. In both cash assistance programs, net income is measured against a set income standard with no adjustment for medical expenses;

medical expenses are not taken into account in any way. Therefore, Congress cannot possibly have meant that the spenddown calculation, the flexible taking into account of medical expenses against income, should be conducted by the "same methodology which would be employed under [AFDC or SSI]," since that methodology does not include any spenddown adjustment at all.

Moreover, Congress had something else very specifically in mind -- the rules for evaluating items of income -- when it enacted this language. The legislative history is clear that the phrase was inserted merely to correct a 1981 Health and Human Services ("HHS") regulatory amendment not involving the length of a budget period for spenddown purposes. See 46 Fed. Reg. 47980 (Sept. 30, 1981). That 1981 HHS amendment had

interpreted the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35 ("OBRA") to give the states flexibility in measuring income; the "same methodology" requirement was intended to reinstate the use of particular cash assistance program methodologies in that area. See H.R. Rep. No. 97-757, Part I, 97th Cong., 2d Sess. 13 (1982). Congress expressly stated its intent to reinstate the prior regulatory scheme, and specifically endorsed other HHS regulations which had not been amended following OBRA, including the one which permits a six-month spenddown period. Id.; see Hogan v. Heckler, supra, 769 F.2d at 899-902; De-Jesus v. Perales, supra, 770 F.2d at 325-26. Moreover, this intent recently has been reaffirmed by Congress. See H.R. Rep. No. 98-861, 98th Cong., 2d Sess., 1366-67 (1984), reprinted in 1984

U.S. Code Cong. & Admin. News 697, 2054-55.[16/]

The court below appeared to recognize much of this when addressing the other issue before it on the appeal. Quoting the recent congressional statement that TEFRA "amended the Medicaid statute to clarify that Congress did not intend to change the policies governing the [. . .] eligibility of the medically needy from those in effect before OBRA," id., the court concluded: "Our examination of this

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16/ Concerns about the Secretary's implementation of the "same methodology" requirement in respects not here at issue, see id., led Congress in the Deficit Reduction Act of 1984, P.L. 98-369, § 2373(c), 98 Stat. 494, 1112, to impose a moratorium on the Secretary's imposition of sanctions, and to call for a report by the Secretary. No such report has yet been submitted. If there are any significant legislative developments affecting this case, we will of course advise the Court.

legislative history indicates that 42 U.S.C. § 1396a(a)(10)(C)(i)(III), requires a State to determine [Medicaid] eligibility in the same manner that was used prior to the recent series of amendments." A17-18.

This understanding, which is entirely correct, should lead inexorably to the conclusion that the continued use of a six-month spenddown was not interdicted by TEFRA. In Massachusetts, this practice has been in effect since 1969. See Mass. St. 1969, c. 800, § 1. The federal policy permitting it was adopted by the U.S. Department of Health, Education and Welfare in 1966 and incorporated in the first Medicaid regulations in 1969. That policy and practice have been consistently maintained, both prior to and following OBRA. It is inconceivable in light

of the legislative history that Congress intended to prohibit this widespread, longstanding and important practice by adopting a "technical correction from OBRA" while expressly endorsing the HHS authorizing regulation.17/

Yet the court below, when it turned to the spenddown issue, disregarded this clearly-applicable legislative history. The resulting erroneous construction of Title XIX, with its very significant practical consequences, should be reviewed and corrected by this Court.

17/ The respondents may suggest that the regulation become invalid instead because OBRA established monthly budgeting periods for the categorically needy. This argument is without merit for the reasons set forth in DeJesus, 770 F.2d at 323, n. 9 and in Hogan, 769 F.2d at 896 and n. 20.

III. THE DECISION BELOW IS IN CONFLICT WITH THE DECISIONS OF THIS COURT REGARDING THE ROLE OF THE SECRETARY IN INTERPRETING TITLE XIX.

The Commissioner emphasized below that the Secretary interprets Title XIX to permit spenddown periods of up to six months. "The Secretary's regulations plainly permit what [Massachusetts] has done." DeJesus v. Perales, supra, 770 F.2d at 322. Moreover, the Secretary's interpretation has been consistent and of long standing. Id., 770 F.2d at 322-23 and n. 8; Hogan v. Heckler, supra, 769 F.2d at 893, 896. Finally, as the court below noted, the Secretary had just forcefully reaffirmed this interpretation in Hogan v. Heckler. A23-24. But, while acknowledging the Commissioner's reliance on the Secretary's regulations, A23, the court failed to give them any considera-

tion, in much the same manner as it disregarded the legislative history and declined, on rehearing, to confront the reasoning of the First and Second Circuits. See A24-26.

In so doing, the court transgressed a long line of controlling decisions of this Court. Only last term this Court again affirmed that the Secretary's interpretation of Title XIX is entitled, at a minimum, to substantial deference. Connecticut Department of Income Maintenance v. Heckler, ___ U.S. ___, 105 S. Ct. 2210, 2214-15 (1985); Schweiker v. Hogan, 457 U.S. 569, 588 (1982). Moreover, when made pursuant to an explicit delegation of substantive authority, which the petitioner submits is present here, see p. 5, supra, the Secretary's interpretation is entitled to legislative

effect. Herweg v. Ray, 455 U.S. 265, 274-75 (1982); Schweiker v. Gray Panthers, 453 U.S. 34, 43-44 (1981). In ignoring the Secretary's interpretation, the decision below conflicts with each of these recent, governing decisions of this Court. See DeJesus v. Perales, supra, 770 F.2d at 327; Hogan v. Heckler, supra, 769 F.2d at 888, 892 and n. 12, 896-97, 902.

Moreover, this transgression was material to the result. Had the court given the Secretary's interpretation the deference required by the decisions of this Court, it perforce would have upheld the Secretary's regulations, and the six-month spenddown, in harmony with the legislative history and the decisions of the First and Second Circuits.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the opinion and order of the Supreme Judicial Court for the Commonwealth of Massachusetts.

Respectfully submitted,

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APPENDIX

APPENDIX

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH

No. 3667

SANTOS RIVERA & others[1/] vs. COMMISSIONER OF PUBLIC WELFARE.

Hampden. January 9, 1985.
- June 12, 1985.

Present: Hennessey, C.J., Wilkins, Liacos, Nolan & O'Connor, JJ.

Administrative Law, Agency's interpretation of statute. Public Welfare, Medical assistance benefits. Medicaid.

CIVIL ACTION commenced in the Superior Court Department on May 20, 1983.

The case was heard by Raymond R. Cross, J.

The Supreme Judicial Court granted requests for direct appellate review.

H. Reed Witherby, Assistant Attorney General, for Commissioner of Public Welfare.

Steven A. Hitov for the plaintiff.

1/ Madeline McKenna and all others similarly situated. A Superior Court judge allowed McKenna's motion to intervene.

NOLAN, J. The Commissioner of Public Welfare appeals from a Superior Court judge's order allowing the plaintiffs' motion for summary judgment.[2/] The plaintiffs individually applied to the Department of Public Welfare (department) for medical assistance (MA) benefits. Each plaintiff worked full time but did not receive any medical benefits from her

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2/ The judge also granted the plaintiffs' motion for class certification, certifying two classes. The first class consists "of all Massachusetts residents who were at the time this action was filed or are currently medically needy, working applicants for or recipients of Medicaid and who were subjected to the defendant's practice of counting their gross income for Medicaid eligibility purposes. The second class [consists] of all those Massachusetts residents who were 'AFDC-related' medically needy applicants for or recipients of Medicaid currently or at the time this action was filed . . . are subjected to the defendant's six-month spend-down requirement in order to qualify or requalify for Medicaid benefits." The department does not contest the propriety of the class certification.

employer. In determining the plaintiffs' eligibility for MA benefits, the department considered the plaintiffs' gross income. The department did not disregard the taxes and social security payments withheld from the plaintiffs' income; rather it applied a flat $75 monthly income disregard. This method resulted in a determination that each plaintiff had income in excess of eligibility levels. The department multiplied each applicant's excess income by six to determine the amount each plaintiff must pay toward incurred medical expenses (spend down amount) before she could become eligible for MA benefits during the six-month budget period. In administrative proceedings, a department appeals referee upheld the department's methodology and determination of each plaintiff's eligibility.

The plaintiffs appealed to the Superior Court. On a motion for summary judgment, the judge ruled that the department had violated G.L. c. 118E, § 10 (5) (1984 ed.), by not deducting taxes and social security payments from an applicant's income when determining eligibility for MA benefits. The judge further ruled that the department's use of certain other eligibility procedures violated 42 U.S.C. § 1396a (a)(10)(C)(i)(III)(1982). Through these procedures, the department determined eligibility on a semiannual basis for applicants who, but for excess income and resources, would be eligible for Aid to Families with Dependent Children (AFDC).[3/] In contrast, the department determined eligibility on a

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3/ AFDC-related medically needy applicants.

monthly basis for applicants who received or were deemed to receive AFDC.[4/] We granted the parties' joint application for direct appellate review. For the reasons stated below, we conclude that the department did not violate G.L. c. 118E, § 10 (5), by the methodology used in determining income for eligibility purposes but that the department's use of a six-month budget period for spend down purposes is improper.

We recently examined the MA benefits program concerning the determination of eligibility based on resource limits. Haley v. Commissioner of Pub. Welfare, 394 Mass. 466 (1985). This program is a cooperative State and Federal effort to

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4/ AFDC-related categorically needy applicants.

pay for medical services provided to categorically and medically needy individuals.[5/] Categorically needy individuals are those who receive or are deemed to receive cash assistance benefits. G.L. c. 118E, § 1 (1984 ed.). See 42 C.F.R. § 435.1(e) (1984). Medically needy individuals would be eligible for cash assistance but for excess income and resources. See G.L. c. 118E, § 1. "Such individuals may have sufficient income and resources for their basic maintenance but not for medical care costs." Haley, supra at 467. A person is eligible for MA benefits if his income is above cash assistance income eligibility standards but at or below MA

5/ See Haley, supra at 467-468, 472, for a full discussion of the MA benefits program.

benefits eligibility standards. 106 Code Mass. Regs. § 506.400 (1983). A person with income above MA benefits eligibility standards also is eligible if his excess income can be reduced by application of a spend down. See 106 Code Mass. Regs. §§ 506.500-506.580 (1983). Excess income is that portion of the income which exceeds the eligibility limits. 106 Code Mass. Regs. § 506.520. In applying a spend down, the individual uses the excess income to pay incurred medical expenses. See 106 Code Mass. Regs. §§ 506.540, 506.570. Once the excess income is absorbed by incurred medical expenses, the applicant is eligible for payment of any other covered medical expenses incurred during the applicable budget period. See 106 Code Mass. Regs. § 506.570.

Neither party disputes the facts of this action. The sole issue in this case concerns the propriety of the department's method of computing income eligibility for MA applicants. We briefly describe that method.

The department initiates its eligibility determination with an examination of an applicant's gross income. See 106 Code Mass. Regs. §§ 505.200, 505.210 (1983). The department converts an applicant's income to monthly amounts. 106 Code Mass. Regs. § 505.320 (1983). In AFDC-related cases, the department deducts $75 from the gross monthly income. 106 Code Mass. Regs. § 506.120(A). After computation of income disregards, 106 Code Mass. Regs. §§ 506.120 and 506.130, the department compares the "Net MA Income" with the applicable MA income

standard. 106 Code Mass. Regs. § 506.400. An applicant with net income at or below the MA income standards is eligible for benefits.

"If Net MA Income is greater than the MA Income Standard, eligibility may be established on the basis of spend-down provisions." 106 Code Mass. Regs. § 506.400. In order to establish eligibility, an applicant must submit paid or unpaid medical bills which exceed his spend down liability. 106 Code Mass. Regs. § 506.540. The department uses a six-month spend down period. 106 Code Mass. Regs. § 506.510. The spend down liability is six times the excess monthly income, the amount of net MA income which exceeds eligibility standards. 106 Code Mass. Regs. § 506.520. Once the spend down liability is absorbed, an applicant

"is eligible for payment of all covered medical expenses incurred during that spend-down period, other than those submitted to meet the spend down liability." The applicant also must continue to meet all other eligibility requirements during the balance of the spend down period. 106 Code Mass. Regs. § 506.570.

1. Income disregards. This action presents an anomalous situation where an apparent incongruity exists in the statutes and regulations which control the income eligibility aspect of the MA benefits program. Title XIX, through a recent amendment, requires the State to use the "same methodology" to determine eligibility for MA benefits "which would be employed under the appropriate State plan [for cash assistance] to which such

group is most closely categorically related." 42 U.S.C. § 1396a(a)(10)(C)(i) (amended by Tax Equity and Fiscal Responsibility Act, Pub. L. 97-248, § 137[b][8], 96 Stat. 378) (TEFRA). The plaintiffs are categorically related to AFDC recipients. In determining AFDC income eligibility, the department applies a $75 income disregard for work expenses. See 42 U.S.C. § 602(a)(8)(A)(ii) (1982). This disregard is applied to gross income. See 45 C.F.R. § 233.20(a)(6)(iii) (1984). See also Heckler v. Turner, 105 S. Ct. 1138, 1153 (1985) (mandatory tax withholdings encompassed in the flat sum disregard and no additional disregard for withholdings allowed). The department applies this same methodology in determining MA eligibility for AFDC-related medically

needy applicants. 106 Code Mass. Regs. § 506.120. General Laws c. 118E, § 10 (5), however, states that "taxes, social security payments or, in the absence thereof, mandatory payments to a retirement system, union dues, and other reasonable and usual costs of earning wages as approved by the department; provided, however, that the latter shall be no greater than two dollars and fifty cents per week or eleven dollars per month" are exempt from income for MA purposes.

In adopting the program to provide medical assistance to medically needy individuals, the Legislature intended to maximize Federal financial participation. G.L. c. 118E, § 1. See ABCD, Inc. v. Commissioner of Pub. Welfare, 378 Mass. 327, 334-335 & n.13 (1979). To further

that goal, the Legislature adopted an MA benefits program designed "to comply with the Federal statutory and regulatory scheme." Haley v. Commissioner of Pub. Welfare, supra at 472. "Furthermore, St. 1969, c. 800, § 10, provides that the provisions of G.L. c. 118E are severable and that any provision 'in violation of any federal rule or regulation established by the [HHS] as a condition for receiving federal funds in connection with any program administered by said department . . . shall be null and void and such violation shall not affect or impair any of the remaining provisions.'" Id. at 472-473.

The department argues that determining MA income eligibility through the use of the additional disregards of G.L. c. 118E, § 10 (5), jeopardizes continued

Federal financial participation. The plaintiffs respond that Federal law only requires the State to determine eligibility for AFDC-related MA applicants no more restrictively than for AFDC recipients; the State may treat such applicants less restrictvely than AFDC recipients. The judge agreed with the plaintiffs that "nothing in [the Federal law] limits income deductions to the flat $75." The judge's conclusion was based on an erroneous belief that G.L. c. 118E (1984 ed.) enumerates the deductions from income under the AFDC plan. General Laws c. 118E pertains only to the MA benefits program. AFDC is controlled by G.L. c. 118 (1984 ed.) and applicable Federal law. See Civetti v. Commissioner of Pub. Welfare, 392 Mass. 474, 475-476 (1984); ABCD, Inc. v. Commissioner of Pub. Welfare, 378 Mass. 327, 331-333 (1979).

Basically, this dispute concerns the interpretation and effect of the "same methodology" language which appears in 42 U.S.C. § 1396a(a)(10)(C)(i)(III). This language was the result of several amendments by which Congress sought to clarify the MA eligibility requirements. Congress has experienced difficulty in conveying the purpose of the language changes to the United States Department of Health and Human Services (HHS). See H.R. Rep. No. 861, 98th Cong. 2d Sess., reprinted in 1984 U.S. Code Cong. & Ad. News 1445, 2055*/ (H.R. Rep. 861).

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*/ Petitioner's Note: The "opinion . . . delivered upon the rendering of the judgment . . . sought to be reviewed," Supreme Court Rule 21.1(k), referenced pages "751, 1361"; but the Official Reports of the Supreme Judicial Court subsequently corrected this reference as set forth in the text. See 395

(footnote continued)

As a result, Congress imposed a moratorium which required HHS to "not take any compliance, disallowance, penalty, or other regulatory action against a State during the moratorium period . . . by reason of such State's plan under Title XIX . . . being determined to be in violation of [42 U.S.C. § 1396a(a)(10)(C)(i)(III)]." Deficit Reduction Act of 1984, Pub. L. 98-369, Title III, § 2373(c), 98 Stat. 1112. Congress adopted the moratorium because HHS had "implemented [the same methodology] provision in an overly literal fashion, without taking into account the

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(footnote continued)

Mass. 189, 194 (Corrected Page). References infra to H.R. Rep. 861 at A16, A17 n.6 (twice), and A26 are set forth in the corrected version. The original references were 1361, 1360 and 1361, and 1361-1362, respectively.

intent of the TEFRA clarification." H.R. Rep. 861, at 2055. In its most recent statement concerning this language, Congress stated that TEFRA "amended the Medicaid statute to clarify that Congress did not intend to change the policies governing the eligibility of the medically needy from those in effect before OBRA [Omnibus Budget Reconciliation Act of 1981, Pub. L. 97-35]." Id.[6/]

6/ OBRA amended 42 U.S.C. § 1396, to give the States "certain flexibility in structuring their medically needy programs." H.R. Rep. 861, at 2054. Prior to this amendment, States could employ less restrictive income and resources eligibility standards or methodologies than those used in the similar cash assistance programs. Id. After OBRA, HHS issued regulations which allowed the "States to impose more restrictive standards and methodologies than under previous law." Id. at 2055. See Hogan v. Heckler, 597 F. Supp. 1106, 1110-1111 (D. Mass. 1984). In further amending 42 U.S.C. § 1396 by TEFRA, Congress at-

(footnote continued)

Our examination of this legislative history indicates that 42 U.S.C. § 1396a(a)(10)(C)(i)(III), requires a State to determine MA eligibility in the same manner that was used prior to the recent series of amendments. Presently, 42 C.F.R. § 435.831(a)(1) requires the department to "deduct amounts that would be deducted in determining eligibility under the State's AFDC plan" in determining income eligibility for AFDC-related MA applicants. To do otherwise could jeopardize Federal financial participa-

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(footnote continued)

tempted to "make[ ] clear that [HHS] had no authority to alter the rules that applied before September 30, 1981, with respect to medically needy income levels, medically needy resource standards, and the methodology for treating medically needy income and resources." Hogan v. Heckler, supra at 1111, quoting H.R. Rep. No. 97-757, Part I, 97th Cong. 2d Sess. 13 (1982).

tion.[7] See 42 C.F.R. § 435.1007 (1984). The same requirements existed prior to the amendments. Compare 42 C.F.R. § 435.831 (1978); 42 C.F.R. § 435.1007 (1978).[8] General Laws c. 118E, § 10 (5), as enacted, reflected the income disregards which were then applicable to AFDC recipients. See 42 U.S.C. § 602(a)(7)(1976); 45 C.F.R. §§ 233.20(a)(7)(i), 233.20(a)(11)(v)(a)

7/ We recognize that the moratorium prevents HHS from imposing any sanction on a State for not using MA eligibility standards which are more restrictive than the related cash assistance program. We find it unnecessary to examine the moratorium to determine to what extent the State may use a less restrictive standard.

8/ The department notes that 42 C.F.R. § 435.1007 refers to 42 C.F.R. § 436.831, and contends that this is a typographical error. We need not view this reference as error because 42 C.F.R. §§ 435.831 and 436.831 contain the same pertinent language.

(1978) (disregard for work related expenses). Cf. 45 C.F.R. §§ 233.20(a)(7)(i), 233.20(a)(11)(1984) (flat $75 disregard and no disregard for work related expenses). See also Heckler v. Turner, 105 S. Ct. 1138, 1142-1147 (1985). This indicates that the Legislature intended to provide the same treatment for medically needy MA applicants as was provided categorically related applicants.

In determining that the department improperly disregarded G.L. c. 118E, § 10 (5), the judge relied on a recent amendment to § 10. However, he did not consider the effect of St. 1969, c. 800, § 10. The judge determined that the Legislature's amendment to G.L. c. 118E, § 10, subsequent to OBRA which changed the AFDC income disregards, indicated a legislative choice "to go beyond the

income disregards of the federal law by specifying additional deductions under c. 118E." We disagree. Once Congress enacted the flat $75 income disregard for AFDC applicants, G.L. c. 118E, § 10 (5), was in conflict with 42 C.F.R. §§ 435.831 and 435.1007. Section 10 (5), therefore, became null and void. St. 1969, c. 800, § 10. As § 10 (5) was null and void at the time, the Legislature did not provide for additional disregards by reenacting § 10 (5) in its 1982 amendments.

Statute 1969, c. 800, § 10, clearly indicates that the Legislature intended G.L. c. 118E to comply with "any Federal rule or regulation established by [HHS] as a condition for receiving federal funds in connection with [the MA] program." We note that this case is distinct from Haley v. Commissioner of Pub.

Welfare, 394 Mass. 466 (1985). In Haley, we were faced with an interpretative opinion of an administrative body. Id. at 473. That interpretation was a clear departure from the agency's prior view and, therefore, not entitled to great deference. Id. at 474. In this action, there exists clear statutory language which is reflected in duly adopted regulations. See 42 U.S.C. § 1396a(a)(10)(C)(i); 42 C.F.R. § 435.831. As our previous discussion indicates, the regulations, even with the recent amendments, require the department to determine MA income eligibility in the same manner that the department uses to determine eligibility for the categorically related cash assistance program. We conclude, therefore, that pursuant to St. 1969, c. 800,

§ 10, G.L. c. 118E, § 10 (5), is null and void. The department's regulation properly applies the flat $75 disregard to income eligibility determinations for the categorically related group.

2. Six-month budget period. The department asserts that the judge erred in concluding that the six-month budget period for spend down purposes violated the "same methodology" language of 42 U.S.C. § 1396a(a)(10)(C)(i)(III). The department argues that the categorically related income eligibility determinations do not involve a spend down; therefore, there is no comparable methodology for the department to match in applying spend down provisions. The department further argues that Federal regulation explicitly allows a six-month budget period. The United States District Court for the

District of Massachusetts recently rejected similar arguments offered by HHS to support the application of the six-month spend down budget period to MA applicants categorically related to Supplemental Security Income (SSI) recipients. Hogan v. Heckler, 597 F. Supp. 1106, 1110-1113 (D. Mass. 1984).9/

In Hogan, the District Court recognized that "the length of the spenddown period is part of the methodology for evaluating income eligibility." Id. at 1110. We agree. There is no distinction between the spend down provisions as

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9/ On February 20, 1985, the Court of Appeals for the First Circuit granted an appeal of this case. We recognize that we do not have the benefit of that court's decision on this issue. We have determined, however, that our resolution of the instant dispute is necessary to prevent prejudicial delay to these parties.

applied to AFDC-related MA applicants and SSI-related MA applicants. See 42 C.F.R. § 435.831. The analysis in Hogan applies equally to this case. Although eligibility determinations for the categorically needy do not involve spend downs, such determinations do require the use of a budget period. See 42 U.S.C. § 1396a(a)(10)(A)(i); 42 C.F.R. §§ 435.110, 435.120; 42 U.S.C. § 1382(c)(1)(one-month budget period for SSI); 42 U.S.C. § 602; 45 C.F.R. § 233.31 (1984) (one-month budget period for AFDC). Calculating the spend down amount over a six-month prospective period results in the use of a six-month budget period for a portion of the income eligibility determinations for MA benefits. Furthermore, utilization of the six-month spend down period treats medically needy

applicants more restrictively than their categorically needy counterparts. The medically needy applicant must weigh six months of putative income against incoming medical bills where a categorically needy individual need only account for actual income. Congress clearly intended to prevent the States from pursuing such more restrictive treatment of the medically needy. H.R. Rep. 861, at 2055-2056. We conclude that the department must use a one-month budget period for spend down purposes.

For the reasons set forth above, we reverse that portion of the judgment which determined that the department violated G.L. c. 118E, § 10 (5), through the application of a flat $75 disregard in determining AFDC-related MA income eligibility, and we affirm that portion

of the judgment which determined that the department's use of a six-month budget period for spend down purposes violated 42 U.S.C. §1396a(a)(10)(C)(i)(III). We remand this matter to the Superior Court for further action consistent with this opinion.

So ordered.

COMMONWEALTH OF MASSACHUSETTS

Hampden, ss.

Superior Court
Civil Action
No. 83-684

SANTOS RIVERA, et al.

Plaintiffs

vs.

CHARLES M. ATKINS, Commissioner, Department of Public Welfare

Defendant

RULINGS ON (1) MOTIONS FOR (a) CLASS CERTIFICATION AND (b) SUMMARY JUDGMENT AND (2) ORDER FOR JUDGMENT

Plaintiffs seek class certification as a class of Medicaid recipients and applicants in Massachusetts.[1/] Plain-

1/ The plaintiffs seek certification for two separate classes. The first class pertains to the use of gross as opposed to net income for determining eligibility. The second class pertains to the six-month spend-down period used. For purposes of this discussion, the

(footnote continued)

tiffs challenge the Massachusetts Department of Public Welfare (Department) policy for determining Medicaid eligibility on two grounds: first, that the Department is using gross income rather than net income as the basis for determining eligibility, and second, that the spend-down is calculated on a six-month basis.[2/] Plaintiffs contend that the

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(footnote continued)

"plaintiffs" refers to both classes, without differentiation, except where the separate classes are specifically mentioned.

2/ Spend-down is the Department procedure whereby in calculating the amount of income available to an applicant for Medicaid, money which is utilized to meet medical expenses is not considered income. 42 U.S.C. §1396 (a)(17)(D). The monthly "spend-down" equals the amount by which a person's income exceeds the relevant monthly Medicaid limit. Before that person may be eligible for Medicaid, the applicant must incur medical expenses equal to the "excess." In Massachusetts, that excess is multiplied by six (the applicant must spend six times the spend-down before being eligible for Medicaid).

Department is in violation of both state and federal law.[3/] The Department contends that its eligibility calculations are based upon Department regulations which are not violations of federal and state law.[4/] In addition, the Department contends that the cost would be pro-

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3/ The state law in question is M.G.L.c. 118E, §10(5) which provides that taxes and social security payments are not to be considered income for purposes of Medicaid. The federal laws in question are 42 U.S.C. §1396 (a)(17), which requires that a state providing Medicaid determine eligibility comparably for all groups, and §1396a (a)(10)(c)(i) as amended by the Tax Equity and Fiscal Responsibility Act of 1982, which requires that a state medical assistance plan use a uniform method for determining eligibility for the medically needy and categorically needy.

4/ The Department cites 106 C.M.R. §§ 505.200 and 506.100-220 as the basis for determining deductions from income. The excess income is that which exceeds the Medicaid standard. 106 C.M.R. §506.520. A six-month calculation is used for spend-down. 106 C.M.R. §506.510.

hibitive if it were ordered to calculate eligibility in the manner asserted by the plaintiffs. Both parties have motions for summary judgment before the court. Because there are no material facts in dispute, this case is ripe for resolution as a summary judgment.

I. The Plaintiffs' Class Action Claims.

In order to proceed as a class action, the plaintiffs must establish that their proposed classes satisfy the numerosity, commonality, typicality and adequacy of representation requirements of Mass. R. Civ. P. 23.

All parties to this litigation have stipulated as to numerosity. (See Stipulation of Class Numerosity dated August 3, 1983.) The plaintiffs propose two classes. See fn. 1. The plaintiffs

in each purported class are challenging a Department regulation or policy. The same regulation or policy is challenged by every member of each of the classes. The first class (Class I) challenges the Department procedure for determining income level (gross rather than net). The challenge is to the Department's methodology as uniformly applied. There are no differing factual situations or variant claims by any class members. The exact same challenge to Department methodology is made by each and every class member. Therefore the prerequisites of commonality and typicality are satisfied. The same is true for the second purported class, which challenges the six-month spend-down requirement. Again, it is a uniformly applied Department policy, with no factual or legal variations between

plaintiffs. Therefore the commonality and typicality prerequisites for the second class are satisfied.

The plaintiffs in both classes are represented by attorneys well versed in welfare litigation. There is no question that they will litigate on behalf of all class members and in the best interest of all. The named plaintiffs, including the intervenors, are in the same situation factually and legally as are all members of each class respectively. There is nothing whatsoever to indicate that the plaintiffs would not adequately represent the class. Therefore the last prerequisite of the first part of Mass. R. Civ. P. 23 is satisfied.

Massachusetts requires that the class claims predominate over all other claims and that a class action be the best form

of action. Since the class claims here are the only claims, they clearly predominate. Because of the inefficiency of any other form of action, given the numbers, status and claims of the plaintiffs here, a class action is the best form of action.

Therefore this court grants the plaintiffs' motion for class certification for two classes. The first class is to consist of all Massachusetts residents who were at the time this action was filed or are currently medically needy, working applicants for or recipients of Medicaid and who were subjected to the defendant's practice of counting their gross income for Medicaid eligibility purposes. The second class is to consist of all those Massachusetts residents who were "AFDC-related" medically

needy applicants for or recipients of Medicaid currently or at the time this action was filed, and who, at the time this action was filed or currently, are subjected to the defendant's six-month spend-down requirement in order to qualify or requalify for Medicaid benefits.

II. The Claims Against Use of Gross Income Under M.G.L.c.118E, §10(5).

The plaintiffs in Class I challenge the Department procedure of using gross income for purposes of spend-down computation. The plaintiffs contend that M.G.L. c.118E, §10(5) mandates that the Department deduct taxes and social security, among other things, from the gross income of "AFDC-related" applicants for Medicaid for purposes of computa-

tion.[5] The Department contends that the AFDC state plan mirrors the federal requirements and disregards a flat $75 pursuant to the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, (OBRA). The Department contends that there is nothing in the AFDC scheme mandating a separate disregard of taxes and social security payments. The Department states

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5/ The state of Massachusetts has chosen to participate in the federal Medicaid program both as to the "categorically needy" and to the "medically needy" as defined in 42 U.S.C. §1396 d (a). M.G.L.c.118E, §1. The history of Medicaid and the requirements thereunder are well documented in numerous other cases. Schweiker v. Hogan, ___ U.S. ___, 102 S.Ct. 2597 (1982); Brogan v. Miller, 537 F.Supp. 139 (1982). That discussion will be omitted from this case because there is no contention as to the Medicaid program itself or its adoption by Massachusetts. Rather, the issues here relate to the Department's application of that program as it pertains to the "medically needy."

that specific disregards would violate 42 C.F.R. §435.831.[6/]

The Massachusetts law at issue here, M.G.L.c.118E, has been amended as recently as 1982. The 1982 amendment was subsequent to passage of OBRA. At the time the legislature passed c.118E, as amended, it was well aware of OBRA. There is nothing in OBRA which limits income deductions to the flat $75.[7/] Following c.118E would not violate OBRA.

6/ 42 C.F.R. §435.831(d) provides eligibility for "medically needy" persons if they incur medical bills equal to the amount of their income that exceeds the Medicaid level. This is the "spend-down" described in fn. 2. The plaintiffs here are only those termed "AFDC-related" as opposed to "SSI-related" applicants.

7/ The Department cites 42 U.S.C. §1396a (a)(10)(c)(III) for support of its flat $75 deduction. However, that law specifically says that the Department must deduct amounts deducted under the state's AFDC plan. M.G.L.c.118E is the state law enumerating deductions to be made.

The state of Massachusetts has chosen to go beyond the income disregards of the federal law by specifying additional deductions under c.118E. It is not within the powers of the Department to overturn or disregard duly enacted legislation. If the legislature decides that the Department should not deduct taxes and social security payments from an applicant's income, then the legislature can amend c.118E to reflect that decision, just as it has recently amended c.118E to require those deductions.

Therefore, the Department is in violation of state law by refusing to deduct taxes and social security payments from applicant's income for purposes of spend-down computation. The Department is hereby ordered to comply with c.118E, §10 (5) in its computations of income for Medicaid purposes.

III. The Claims Against the Department's Six-Month Spend-Down Policy.

The plaintiffs in Class II challenge the Department procedure of requiring a Medicaid applicant to incur six times his or her spend-down amount before providing Medicaid coverage. The Department relies on 106 C.M.R. §506.510 and M.G.L. c.118E, §10 for this procedure. The plaintiffs contend that this procedure conflicts with 42 U.S.C. §1396 (a)(10) which requires a state to use the same methodology in determining the income of AFDC-related medically needy families as it uses in determining AFDC eligibility.[8/] The Department responds that

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8/ 42 U.S.C. §1396a (a)(10)(c)(i)(III) provides that where a state chooses to

(footnote continued)

the six-month spend-down is not a "methodology" of calculating income. In addition, the Department contends that acceptance of the plaintiffs' argument would require a radical expansion of the Medicaid program.

The Department does not contest that financial eligibility for AFDC applicants is determined on a monthly basis. See 42 U.S.C. §602(a)(13). This methodology permits the Department to examine an applicant's income on a month-by-month basis to reflect more realistically the

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(footnote continued)

extend Medicaid to the medically needy, the plan must describe "... the single standard to be employed in determining income and resource eligibility for all such groups, and the methodology to be employed in determining such eligibility, ...and which shall be the same methodology which would be employed under the appropriate state plan...to which such group is most closely categorically related."

income actually available to an applicant. That monthly determination comports with federal law. However, where an applicant is in what is termed the AFDC-related medically needy group, the applicant's income is evaluated semi-annually. 106 C.M.R. §506.520. Therefore, by budgeting AFDC-related categorically needy Medicaid applicants on a monthly basis and AFDC-related medically needy Medicaid applicants on a semi-annual basis, the Department is in fact operating two separate eligibility standards for two related groups. The Department's contention that the six-month spend-down is not a determination of income eligibility is totally without merit. Therefore, the Department procedure is in

violation of 42 U.S.C. §1396a (a)(10)(c)(i)(III).[9/]

The problem found here is that M.G.L. c.118E, §10, as amended, continues to expressly require a six-month spend-down. Unlike the portion of the statute discussed in Part II (c.118E, §10[5]), this portion of c.118E is in direct conflict with federal law. To the extent that M.G.L. c.118E, §10 conflicts with federal law (the six-month spend-down requirement), it must be voided pursuant to the Supremacy Clause of the United States Constitution.

9/ The history of 42 U.S.C. §1396a (a)(10), as cited by the Department, in fact supports this finding. Originally the statute said that eligibility standards should be "comparable." As amended by the Tax Equity and Fiscal Responsibility Act of 1982, the statute now says "single." P.L. 97-248, §137. This court notes that the strengthening of that language is a clear indication that Congress intended one method of eligibility computation.

To the extent that the Department relies on 42 C.F.R. §435.831, that argument must also fail. That regulation was promulgated prior to the enactment of OBRA and at the time did not conflict. Subsequent to the passage of 42 C.F.R. §435.831, federal law has been passed to require monthly eligibility determinations for AFDC applicants. Consequently, 42 C.F.R. §435.831 would not control. In addition, there is a saving provision within the regulation which requires that eligibility be based on countable income as determined under the applicable standard. 42 C.F.R. §435.831(b). The applicable standard in Massachusetts, as discussed above, is a monthly standard.

Finally, the Department contends that the large potential cost of using the

same standard for medically needy and categorically needy is sufficient justification to disregard the law. This court finds absolutely no support for a proposition that the law may be ignored because it might be costly to obey it.

Accordingly, this Court will grant plaintiffs' motion for class certification for the two classes described in Part I of this order. This Court grants the two plaintiff-classes' motion for summary judgment and orders that the Department of Public Welfare:

1) Apply M.G.L. c.118E, §10(5) in determining income for all AFDC-related Medicaid applicants or recipients;

2) Impose a spend-down requirement calculated on a one-month basis for all AFDC-related Medicaid applicants or recipients.

3) Pay reasonable attorney's fees and costs to the Plaintiffs pursuant to 42 U.S.C. §1983 and 42 U.S.C. § 188.

It is Ordered that an appropriate judgment enter herein.

s/s R.R. Cross
Justice of the Superior Court

Entered: March 26, 1984

MASSACHUSETTS DEPARTMENT OF
PUBLIC WELFARE
DIVISION OF HEARINGS
APPEAL DECISION

Appeal No. 98996
Denied

DECISION DATE: April 27, 1983

NAME: Santos Rivera

ADDRESS: 3421 Main Street, Springfield, MA 01107

DATES: 3/28/83 Filing 4/14/83 Hearing

JURISDICTION:

Notice dated 2/3/83 was sent to the appellant stating the Department had denied the appellant's application for Medicaid because: of excess income - "You can not meet surplus amount 106 CMR 506.400" (Exhibit A).

The appellant filed this appeal on 3/28/83, and, therefore, it is timely (106 CMR 343.140(B)).

The denial of an application is grounds for appeal (106 CMR 343.230(A)).

ACTION BY DEPARTMENT:

The Department has denied the appellant's application for Medicaid Assistance.

ISSUES:

Does the appellant have net income in excess of the eligibility standards? Did the Department correctly determine net countable income? Was the appellant's surplus income calculated correctly?

SUMMARY OF EVIDENCE:

Notice dated 2/3/83 was also sent informing the appellant of the amount of surplus income calculated by the Department. This notice explained the process by which eligibility could be established on the basis of that surplus. (Exhibit B).

The Department representative submitted into evidence the wage information (Exhibit C) and the worksheet evaluating the appellant's income (Exhibit D) and reviewed for the benefit of the Referee and the appellant the calculations set forth therein.

The appellant was represented by a staff attorney from Western Massachusetts Legal Services. The appellant's counsel argued:

(a) that the Department incorrectly determined available countable net income in violation of Massachusetts Law Chapt. 118E, Sec. 10(5) and Federal Law and regulation. Specifically, counsel contended that the Department incorrectly applied the Work-Related Expense deduction (WRE) to the appellant's gross monthly income amount rather than to the

net monthly income amount which is the amount after mandatory federal tax, FICA, and state tax deductions;

(b) that the Department incorrectly determined MA eligibility requirements in accordance with Spend-down requirements. The representative argued that Spend-down eligibility requirements for the "medically needed" was an incorrect application of relevant federal law and regulations. The advocate argued that eligibility for the "medically needed" should be the same as "categorical eligibility". The representative submitted into evidence MGL Chapter 118E, Sec. 10 (Exhibit F), federal regulation 42 USC Sec. 1396a(10) (C) (i) (Exhibit J), and Public Law - 97-248 (Sept. 3, 1982) Amending Sec. 1902 (a) (10) (C) (i) (Exhibit K).

FINDINGS OF FACT:

The record shows and I so find:

1) That the appellant filed an application for Medical Assistance on January 13, 1983. (See MA Application (Exhibit E));

2) That the appellant filed for herself and two (2) dependent children (Ibid);

3) That it was undisputed that the appellant is employed full-time and has earned income. (testimony and See Exhibits C, E, and G);

4) That the Department correctly allowed a $75.00 monthly deduction from gross wages (Work-Related Expense deduction. See 106 CMR 506.120(A)(1). The Department correctly applied the standard of need to the appellant's net MA

Income (amount after the allowable earned income deduction, ie., $75.00 WRE). The standard of need for a family of three (3) is $435.00 (106 CMR 506.410). The Department erred in calculating excess Net Monthly Income (excess net monthly income - standard of need). Excess Net Monthly Income is calculated as follows: $535.30 - $435.00 = $100.30 (The Department incorrectly calculated $90.30) (See 106 CMR 506.400).

The Referee finds the surplus for six (6) months is $601.80 ($100.30 x 6). See 106 CMR 506.500, 506.510, & 506.520.

CONCLUSIONS OF LAW:

The Department correctly determined that the appellant was entitled to a work-related expense deduction of $75.00 monthly from gross wages. 106 CMR 506.120(A).

The Department correctly calculated the appellant's net income and six month surplus in accordance with procedures set forth at 106 CMR 506.000, 506.620. The Department erred in the mathematical calculation of the excess net monthly income and 6 month surplus amount. Therefore, if the appellant incurs medical expenses in excess of the six month surplus, as determined by the Referee, and if the appellant meets all other conditions of eligibility at such time, Medicaid will be responsible for all approved medical expenses which are in excess of the surplus.

106 CMR 343.610 at (c) states the Referees shall not render decisions which require their determination of the legality of the Department regulation, and further, "if the legality of the Department regulation is at issue, the Referee

shall render a decision that (s)he can not rule on that issue and shall base his decision on the applicable regulation". Therefore, this Referee does not rule the legal issues raised by the appellant's representative.

This appeal is therefore denied.

ACTION FOR CSAO:

Send new notice to the appellant for the surplus for six months as found in "Findings."

s/s
Edward J. Collins
Welfare Appeals Referee.

Copy: Steven Hitov/WMLS
145 State St., Spfld., MA

MASSACHUSETTS DEPARTMENT OF
PUBLIC WELFARE
Division of Hearings
APPEAL DECISION

Appeal No: 101327
Denied

DECISION DATE: June 07 1983

NAME: Madeline McKenna

ADDRESS: 14 Palmer Road, Three Rivers, MA 01080

DATES: _____/_____
Filing Hearing

JURISDICTION:

Notices dated 4/5/83 and 5/19/83, as corrected, were sent to the appellant stating that the Department had denied the appellant's application for Medicaid because: your income exceeds Medical Assistance program limits. 106 CMR 506.400 (Exhibit A). The appellant filed this appeal on 5/18/83, and, therefore, it is timely (106 CMR 343.140(B)).

The denial of an application is grounds for appeal (106 CMR 343.230(A)).

ACTION BY DEPARTMENT:

The Department has denied the appellant's application for Medicaid Assistance.

ISSUES:

Does the appellant have net income in excess of the eligibility standards?

Was the appellant's surplus income calculated correctly?

Can the Department pay for prior authorized dental services?

SUMMARY OF EVIDENCE:

Notices dated 4/4/83 and 5/19/83, as corrected, were also sent informing the appellant of the amount of surplus income calculated by the Department. This notice explained the process by which

eligibility could be established on the basis of that surplus. (Exhibit B).

The Department representative submitted into evidence verifications of the appellant's income (Exhibit C) and reviewed for the benefit of the Referee and the appellant the calculations set forth therein.

The appellant stated that in December, 1982 a favorable appeal decision issued approving Orthodontic treatment. The appellant submitted into evidence - "Request for approval, MA-11" (Exhibit G).

The appellant also submitted into evidence an "Orthodontic Treatment Contract" (Exhibit F). The appellant requested the bill be applied to meet her surplus.

FINDINGS OF FACT:

The Department correctly calculated the appellant's monthly net income to be $531.66, which is $106.66 in excess of the eligibility standard of $425.00 (the exemption for a family of 2). The surplus for six months is $639.96.

On December 6, 1982 the Department approved Orthodontic services, service codes #060817, (1) unit and #060861, (12) units. (On or about December 6, 1982, the appellant received AFDC for herself and dependent child. Orthodontic services were approved for the dependent) See MA-11, Exhibit C.

Service code 060817 is intended to meet costs for Radiographs - Orthodontic X-ray. 106 CMR 420.422(F). 060817 is for initial fees (including diagnosis, models, photograph, and x-rays). 106

CMR 420.608. Service code 060861 concerns orthodontic treatment, active, first year, including a retainer. 106 CMR 420.428(a).

The appellant's AFDC assistance terminated on 12/9/82 because her earned income exceeded AFDC limits. The appellant continued to be eligible for MA until 3/30/83. The appellant applied for MA-AFDC on March 30, 1983.

106 CMR 420.428 provides that "both limited and full Orthodontic treatment are reimbursable only for recipients under the age of 21. However, regardless of the recipient's age, the Department will pay for the continuation of full Orthodontic treatment as long as the recipient remains eligible for Medical Assistance."

106 CMR 420 states that the Department will not pay for a prior-authorized

service when the recipient's Medical Assistance eligibility is terminated on or before the date of service.

Service codes 060817 and 060861 require prior authorization (106 CMR 420.409(C).

I have found that the appellant's MA eligibility terminated on March 30, 1983. I conclude therefore, that the Department cannot pay for the continuation of Orthodontic treatment as of the date of MA ineligibility.

I conclude therefore, that the appellant's MA eligibility is subject to 106 CMR 506.000 - 506.620 spend-down eligibility.

The Department correctly calculated the appellant's net income and six month surplus in accordance with the procedures set forth at 106 CMR 506.000 - 506.620. Therefore, if the appellant incurs medi-

cal expenses in excess of the six month surplus, and if the appellant meets all other conditions of eligibility at such time, Medicaid will be responsible for all approved medical expenses which are in excess of the surplus.

ACTION FOR WSO:

None.

s/s
Edward J. Collins
Welfare Appeals Referee

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH,

AT BOSTON, June 12, 1985.

IN THE CASE NO. SJC-3667

SANTOS RIVERA & others
v.
COMMISSIONER OF PUBLIC WELFARE

pending in the Superior Court Department of the Trial Court for the County of Hampden No. 83-684

ORDERED, that the following entry be made in the docket; viz., --

We reverse that portion of the judgment which determined that the department violated G.L. c. 118E, § 10 (5), through the application of a flat $75 disregard in determining AFDC-related MA income elibility, and we affirm that portion of the judgment which determined that the

department's use of a six-month budget period for spend down purposes violated 42 U.S.C. § 1396a(a)(10)(C)(i)(III). We remand the matter to the Superior Court for further action consistent with the opinion.

BY THE COURT,

s/s Frederick J. Quinlan
Assistant Clerk

June 12, 1985

See opinion on file.

SUPREME JUDICIAL COURT
FOR THE COMMONWEALTH
ROOM 1412 COURT HOUSE
BOSTON, MASSACHUSETTS 02108

JEAN M. KENNETT (617) 725-8055
Clerk
FREDERICK J. QUINLAN
Assistant Clerk

September 26, 1985

H. Reed Witherby, A.A.G.
1 Ashburton Place
Boston, MA 02108

Dear Attorney Witherby:

RE: SJC-3667
SANTOS RIVERA & others
vs.
COMMISSIONER OF PUBLIC
WELFARE

Your Petition for Rehearing has been considered by the Court and is denied.

Very truly yours,

L. Holliey White
Assistant Clerk, pro tem

cc: Steven A. Hitov, Esquire
Western Mass. Legal Services
145 State Street
Springfield, MA 01103

Rene Reixach, Esquire
Greater Upstate Law Project
101 Powers Building
Rochester, NY 14614

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS. SUPERIOR COURT
C.A. No. 83-684

SANTOS RIVERA, et al.,
Plaintiffs

v.

CHARLES ATKINS,
Defendant

AMENDED JUDGMENT

This case having been commenced by a complaint filed on May 20, 1983, and the defendant having answered on June 27, 1983, and upon plaintiffs' motions for class certification and summary judgment and the memoranda, stipulation and oral argument of both parties in regard thereto, it is hereby

ORDERED, that:

1. A class be certified in this action consisting of all those AFDC-related medically needy applicants for or recipients of Medicaid who have been, are being or will be subjected to the defendant's six-month spend-down requirements in order to qualify or requalify for Medicaid benefits;

2. A subclass be certified in this action consisting of all those AFDC-related medically needy working applicants for or recipients of Medicaid who have been, are being, or will be subjected to the defendant's practice of counting for Medicaid eligibility purposes their gross income without disregarding at least the amount withheld from their checks for taxes and social security payments;

3. A declaration issue pursuant to M.G.L. ch. 231A stating that the defen-

dant's practice of imposing a six-month spend-down requirement on AFDC-related medically needy applicants for or recipients of Medicaid when such a requirement is not imposed on AFDC-related categorically eligible applicants for or recipients of Medicaid violates 42 U.S.C. § 1396a(a)(10)(C)(i)(III);

4. A declaration issue pursuant to M.G.L. ch. 231A stating that, to the extent that M.G.L. ch. 118E, § 10 and 106 C.M.R. §§ 506.510 and .520 and other Department of Public Welfare regulations mandate or authorize the imposition of a six-month spend-down on AFDC-related medically needy applicants for or recipients of Medicaid, those provisions are void pursuant to the Supremacy Clause of the United States Constitution;

5. A declaration issue pursuant to M.G.L. ch. 231A stating that the defendant's practice of computing the spend-down of a working AFDC-related medically needy applicant for or recipient of Medicaid without deducting from that person's income at least the amount withheld from his or her check for taxes and social security payments violates M.G.L. ch. 118E, § 10(5);

6. The defendant and the Department of Public Welfare are permanently enjoined from imposing upon AFDC-related medically needy applicants for or recipients of Medicaid more than a one-month spend-down requirement;

7. The defendant and the Department of Public Welfare are permanently enjoined from refusing to disregard the amounts withheld for taxes and social security payments from the paychecks of

working AFDC-related medically needy applicants for or recipients of Medicaid when computing the monthly spend-downs of such applicants or recipients, in accordance with M.G.L. ch. 118E, § 10;

8. The defendant, through the Department of Public Welfare, within 45 days of the date of this order, or within such longer period as the Court may allow upon Motion, redetermine the eligibility for Medicaid of each class member herein in compliance with ¶¶ 6 and 7, supra, and inform each class member of the amount of his or her monthly spend-down which must be met in order for him or her to be eligible for Medicaid;

9. The defendant, through the Department of Welfare, within 45 days of the date of this order, recompute the eligibility of the named plaintiffs pur-

suant to ¶¶ 6 and 7, supra, from the dates of their applications for Medicaid and pay them, for any month(s), any amounts incurred by them for medical expenses which exceeded the amount of their monthly spend-downs; and

10. The plaintiffs are the prevailing party in this action and are entitled to an award of an attorney's fee pursuant to 42 U.S.C. § 1988, the amount of said fee to be determined by the parties or upon motion to this Court, or both.

DATED: May 24, 1984

s/s R. R. Cross
Justice of the Superior Court